

### REMARKS

In response to the Office Action mailed June 1, 2006, Applicants have amended claim 1 and added new claim 24. It is urged that support for all the above amendments may be found throughout the specification as originally filed, for example at page 32, line 28-page 33, line 8; page 34, lines 1-10; page 91, lines 6-9; and page 96, line 23-page 97, line 3. No new matter has been added. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Following the amendments, claims 1, 3-4 and 22-24 are pending in the application. Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

#### *Claim Interpretation*

The PTO asserts that the term "complement" has not been defined with respect to the polynucleotide. As such, the PTO interprets this term to mean any two or more nucleotides complementary to the polynucleotide of SEQ ID NO:305.

As discussed further below in the context of the rejection under 35 U.S.C. § 112, Applicants disagree with this interpretation of the term "complement".

#### *Rejections Under 35 U.S.C. § 112*

Claims 1, 3-4 and 22-23 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. More particularly, in view of the interpretation of the term "complement" outlined above, the PTO asserts that the claimed invention encompasses billions of different possible polynucleotide species. Further, the PTO asserts that the claims encompass alternatively spliced variants, allelic variants and upstream and downstream regions that have not been described in the application.

Applicants respectfully traverse the rejection and submit that the claim clearly specifies the complement of the sequence provided in SEQ ID NO:305. It is submitted that this wording, in contrast to "a complement", for example, is clearly referring to the fully

complementary sequence across the whole length of SEQ ID NO:305, and that this would be apparent to the skilled person. Nonetheless, solely for clarity and to advance prosecution, Applicants have amended claim 1 to recite “the full length complement” of the sequence provided in SEQ ID NO:305. Further, without acquiescence and solely to advance prosecution, Applicants have amended claim 1 to recite “a polynucleotide wherein the sequence of the polynucleotide consists of the sequence provided in SEQ ID NO:305 or the full length complement thereof; a polynucleotide that is up to 2000 nucleotides in length and comprises the sequence provided in SEQ ID NO:305 or the full length complement thereof; and a polynucleotide wherein the sequence of the polynucleotide consists of a fragment of the sequence provided in SEQ ID NO:305 or the full length complement thereof, wherein the fragment is 50-400 nucleotides in length, and wherein the fragment can be used to detect the presence of the polynucleotide provided in SEQ ID NO:305 in a biological sample.” This amendment is made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Applicants submit that the rejection has been obviated by the amendment and may be properly withdrawn.

#### ***Rejections Under 35 U.S.C. § 102***

Claims 1, 3-4 and 22-23 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Yue *et al.* (WO 01/90334). The PTO asserts that Yue *et al.* disclose a polynucleotide (SEQ ID NO:23) that is 100% identical to the claimed polynucleotide of SEQ ID NO:305, vectors comprising said sequence, host cells comprising the vector, and compositions comprising said sequence.

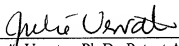
Without acquiescing to the rejection and without prejudice, Applicants have amended claim 1 to recite “a polynucleotide wherein the sequence of the polynucleotide consists of the sequence provided in SEQ ID NO:305 or the full length complement thereof; a polynucleotide that is up to 2000 nucleotides in length and comprises the sequence provided in SEQ ID NO:305 or the full length complement thereof; and a polynucleotide wherein the sequence of the polynucleotide consists of a fragment of the sequence provided in SEQ ID

NO:305 or the full length complement thereof, wherein the fragment is 50-400 nucleotides in length, and wherein the fragment can be used to detect the presence of the polynucleotide provided in SEQ ID NO:305 in a biological sample". Applicants reserve the right to prosecute any subject matter modified or removed by way of this amendment in a related application. Applicants submit that the rejection has been obviated by the amendment. Reconsideration of the claims and withdrawal of the rejection are respectfully requested.

In view of the above amendments and remarks, the claims are now believed to be in condition for allowance. However, should any further issue require attention prior to allowance, the Examiner is requested to contact the undersigned at 206-622-4900 to resolve same.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,  
SEED Intellectual Property Law Group PLLC

  
\_\_\_\_\_  
Julie A. Urvater, Ph.D., Patent Agent  
Registration No. 50,461

JAU:ms

701 Fifth Avenue, Suite 5400  
Seattle, Washington 98104-7092  
Phone: (206) 622-4900  
Fax: (206) 682-6031

794548\_1.DOC